

# Exhibit B

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19 ORACLE AMERICA, INC. Plaintiff,  
20 v. Google Inc. Defendant.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Case No. 3:10-cv-03561-WHA

Honorable Judge William Alsup

**DEFENDANT GOOGLE INC.'S  
RESPONSES TO PLAINTIFF'S  
INTERROGATORIES, SET ONE**

1           copying of the memory space of the master runtime system process until the child  
 2           runtime system process needs to modify the referenced memory space of the  
 3           master runtime system process,” or other elements citing similar functionality.

4           Google reiterates that the above contentions are being made very prematurely and in view  
 5           of inadequate disclosures by Oracle, as well as in advance of any claim construction rulings.  
 6           Google reserves the right to amend and supplement this response as it gains more insight into  
 7           Oracle’s contentions, as well as after any claim construction order.

8 **INTERROGATORY NO. 4:**

9           Please explain the factual and legal bases for Google’s pleading of its third affirmative  
 10          defense: Patent Unenforceability (Waiver, Estoppel, Laches).

11 **RESPONSE:**

12           In addition to its General Objections, Google objects to this Interrogatory as it seeks  
 13          information protected by the attorney-client privilege, the work product doctrine, and/or any  
 14          other applicable privilege, immunity, or protection. Google further objects to this Interrogatory  
 15          as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible  
 16          information. Google further objects to the request to “explain” factual bases as vague and  
 17          ambiguous. Google further objects to any implication in this Interrogatory that Google has any  
 18          burden beyond what is required by any applicable statute or case law. Google further objects to  
 19          any implication that the theories of patent unenforceability included under this heading in  
 20          Google’s Answer and Counterclaims necessarily share common factual or legal bases. Google  
 21          further objects to extent that certain factual contentions involved in the pleading of these theories  
 22          were made “upon information and belief” that, after a reasonable opportunity for further  
 23          investigation, Google would likely have evidentiary support. Google has made discovery  
 24          requests related to this defense but has not yet received responsive information. Inclusion of  
 25          Oracle’s allegations in the list of facts in this response does not mean that Google agrees with the  
 26          veracity of the allegation, but merely references the fact that particular allegations were made.  
 27          Google expressly maintains all objections made in responsive pleadings. Google further objects  
 28          to this Interrogatory as unnecessary in view of the specific disclosures contemplated by the

1 Patent Local Rules as well as premature at least because claim terms have not been construed  
 2 and any response herein is made in view of the lack of certainty with respect to the resolution of  
 3 the meaning of claim terms.

4       Subject to the foregoing objections and the General Objections, without waiver or  
 5 limitation thereof, Google states that the following facts relevant to this defense were in its  
 6 possession or accessible to Google at the time it pleaded this defense in its Answer and  
 7 Counterclaims:

- 8     • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 9     • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 10    • Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of  
 11      the Federal Rules of Evidence.
- 12    • The patents-in-suit and their prosecution histories.
- 13    • Publicly available documents with information regarding the statements and actions of  
 14      Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in  
 15      paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and  
 16      Counterclaims under the heading "The Java Platform and Programming Language," as well  
 17      as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- 18    • Publicly available documents with information regarding the development of the Android  
 19      Platform, including the information disclosed in paragraphs 11 through 17 of the  
 20      counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open  
 21      Handset Alliance and Development of the Android Platform."
- 22    • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the  
 23      heading "Android and the Java Programming Language" of Google's Answer and  
 24      Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through  
 25      GOOGLE-00320077.

26       Google further states that, as reflected in Oracle's Patent Local Rule 3-1 disclosures,  
 27 Oracle was aware of Android pursuant to discussions with Andy Rubin prior to Android's  
 28 acquisition by Google, which are believed to have occurred at least as early as 2005. Google

1 further states that Oracle was aware of Android and the Open Handset Alliance, at least as early  
 2 as November 2007, as reflected by Jonathan Schwartz's public comments congratulating Google  
 3 and the Open Handset Alliance on the announcement of Android. Nevertheless, Oracle waited  
 4 several years before bringing suit, while the Android market grew and while Google and  
 5 numerous handset manufacturers and other entities made significant investments in the Android  
 6 Platform. Google further states that Oracle's actions, including statements and actions of its  
 7 predecessor Sun encouraging use of the Java programming language, form the basis of Google's  
 8 defenses involving waiver, estoppel and laches. Google has a reasonable belief that the  
 9 discovery it requested will reveal additional evidence to support this defense and reserves the  
 10 right to supplement this response accordingly.

11 **INTERROGATORY NO. 5:**

12 Please explain the factual and legal bases for Google's pleading of its fourth affirmative  
 13 defense: Substantial Non-Infringing Uses (Patent).

14 **RESPONSE:**

15 In addition to its General Objections, Google objects to this Interrogatory as it seeks  
 16 information protected by the attorney-client privilege, the work product doctrine, and/or any  
 17 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory  
 18 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible  
 19 information. Google further objects to the request to "explain" factual bases as vague and  
 20 ambiguous. Google further objects to any implication in this Interrogatory that Google has any  
 21 burden beyond what is required by any applicable statute or case law. Inclusion of Oracle's  
 22 allegations in the list of facts in this response does not mean that Google agrees with the veracity  
 23 of the allegation, but merely references the fact that particular allegations were made. Google  
 24 expressly maintains all objections made in responsive pleadings. Google further objects to this  
 25 Interrogatory as unnecessary in view of the specific disclosures contemplated by the Patent Local  
 26 Rules as well as premature at least because claim terms have not been construed and any  
 27 response herein is made in view of the lack of certainty with respect to the resolution of the  
 28 meaning of claim terms.

1 and design constraints); elements that have entered the public domain; and/or elements that are  
 2 subject to a limited number of forms of expression due to functional or other considerations. In  
 3 addition, any similarities between any protectable elements of the Asserted Works and the  
 4 Android Platform are, at most, de minimis and not actionable. Google has served Interrogatories  
 5 to obtain further details regarding Oracle's copyright allegations and requires complete responses  
 6 to those Interrogatories to respond more completely to this Interrogatory. Google therefore  
 7 reserves the right to supplement this response accordingly.

8 **INTERROGATORY NO. 10:**

9       Please explain the factual and legal bases for Google's pleading of its eleventh  
 10 affirmative defense: Copyright Unenforceability (Waiver, Estoppel, Laches).

11 **RESPONSE:**

12       In addition to its General Objections, Google objects to this Interrogatory as it seeks  
 13 information protected by the attorney-client privilege, the work product doctrine, and/or any  
 14 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory  
 15 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible  
 16 information. Google further objects to the request to "explain" factual bases as vague and  
 17 ambiguous. Google further objects to any implication in this Interrogatory that Google has any  
 18 burden beyond what is required by any applicable statute or case law. Google further objects to  
 19 any implication that the theories of copyright unenforceability included under this heading in  
 20 Google's Answer and Counterclaims necessarily share common factual or legal bases. Google  
 21 further objects to extent that certain factual contentions involved in the pleading of these theories  
 22 were made "upon information and belief," that after a reasonable opportunity for further  
 23 investigation, Google would likely have evidentiary support. Google has made discovery  
 24 requests related to this defense but has not yet received responsive information. Inclusion of  
 25 Oracle's allegations in the list of facts in this response does not mean that Google agrees with the  
 26 veracity of the allegation, but merely references the fact that particular allegations were made.  
 27 Google expressly maintains all objections made in responsive pleadings.

28       Subject to the foregoing objections and the General Objections, without waiver or

1 limitation thereof, Google states that the following facts relevant to this defense were in its  
 2 possession or accessible to Google at the time it pleaded this defense in its Answer and  
 3 Counterclaims:

- 4 • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 5 • Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- 6 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 7 • Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- 8 • Publicly available information relating to the Asserted Works including the documents  
   9 produced at GOOGLE-00319933 through GOOGLE-00320071.
- 10 • Publicly available documents with information regarding the statements and actions of  
   11 Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in  
   12 paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and  
   13 Counterclaims under the heading "The Java Platform and Programming Language," as well  
   14 as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- 15 • Publicly available documents with information regarding the development of the Android  
   16 Platform, including the information disclosed in paragraphs 11 through 17 of the  
   17 counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open  
   18 Handset Alliance and Development of the Android Platform."
- 19 • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the  
   20 heading "Android and the Java Programming Language" of Google's Answer and  
   21 Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through  
   22 GOOGLE-00320077.

23           Google further states that, as reflected in Oracle's Patent Local Rule 3-1 disclosures,  
 24 Oracle was aware of Android pursuant to discussions with Andy Rubin prior to Android's  
 25 acquisition by Google, which are believed to have occurred at least as early as 2005. Google  
 26 further states that Oracle was aware of Android and the Open Handset Alliance, at least as early  
 27 as November 2007, as reflected by Jonathan Schwartz's public comments congratulating Google  
 28 and the Open Handset Alliance on the announcement of Android. Nevertheless, Oracle waited

1 several years before bringing suit, while the Android market grew and while Google and  
 2 numerous handset manufacturers and other entities made significant investments in the Android  
 3 Platform. Google further states that Oracle's actions, including statements and actions of its  
 4 predecessor Sun encouraging use of the Java programming language, form the basis of Google's  
 5 defenses involving waiver, estoppel and laches. Google has a reasonable belief that the  
 6 discovery it has requested will reveal additional evidence to support this defense and reserves the  
 7 right to supplement this response accordingly.

8 Google further states that, upon information and belief, Oracle knew at least as early as  
 9 May 2005 that elements of the Android Platform were made publicly available by the Apache  
 10 Software Foundation under the terms of the Apache Software License version 2.0 and were  
 11 necessary to allow for interoperability. Upon information and belief, Oracle has never pursued  
 12 any claim against the Apache Software Foundation or accused the materials created by the  
 13 Apache Harmony Project of infringement and it is a publicly known fact that many members of  
 14 the software development community have relied upon the availability of software code  
 15 embodied in the Apache Harmony Project materials under the terms of the Apache Software  
 16 License version 2.0 and used or distributed that code under those terms. Google has a reasonable  
 17 belief that the discovery it has requested will reveal additional evidence to support this defense  
 18 and reserves the right to supplement this response accordingly.

19 **INTERROGATORY NO. 11:**

20 Please explain the factual and legal bases for Google's pleading of its twelfth affirmative  
 21 defense: Fair Use.

22 **RESPONSE:**

23 In addition to its General Objections, Google objects to this Interrogatory as it seeking  
 24 information protected by the attorney-client privilege, the work product doctrine, and/or any  
 25 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory  
 26 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible  
 27 information. Google further objects to the request to "explain" factual bases as vague and  
 28 ambiguous. Google further objects to any implication in this Interrogatory that Google has any

1     **INTERROGATORY NO. 15:**

2                 Please explain the factual and legal bases for Google's pleading of its seventeenth and  
3                 eighteenth affirmative defenses: License and Implied License.

4     **RESPONSE:**

5                 In addition to its General Objections, Google objects to this Interrogatory as an explicit  
6                 multiple-part Interrogatory going to two different defenses and the following objections refer to  
7                 both distinct requests. Google further objects to this multi-part Interrogatory as seeking  
8                 information protected by the attorney-client privilege, the work product doctrine, and/or any  
9                 other applicable privilege, immunity, or protection. Google further objects to this multi-part  
10                Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of  
11                admissible information. Google further objects to the request to "explain" factual bases as vague  
12                and ambiguous. Google further objects to any implication in this multi-part Interrogatory that  
13                Google has any burden beyond what is required by any applicable statute or case law. Google  
14                further objects to extent that certain factual contentions involved in the pleading of these  
15                defenses were made "upon information and belief" that, after a reasonable opportunity for further  
16                investigation, Google would likely have evidentiary support. Google has served discovery  
17                requests related to these defenses but has not yet received responsive information. Inclusion of  
18                Oracle's allegations in the list of facts in this response does not mean that Google agrees with the  
19                veracity of the allegation, but merely references the fact that particular allegations were made.  
20                Google expressly maintains all objections made in responsive pleadings. Google further objects  
21                to this multi-part Interrogatory as unnecessary with respect to the defenses as they pertain to  
22                patent in view of the specific disclosures contemplated by the Patent Local Rules.

23                 Subject to the foregoing objections and the General Objections, without waiver or  
24                 limitation thereof, Google states that the following facts relevant to this defense were in its  
25                 possession or accessible to Google at the time it pleaded these defenses in its Answer and  
26                 Counterclaims:

- 27                 •     Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).  
28                 •     Facts contained or cited in Google's Motion to Dismiss (Doc. #33).

- 1     • Allegations contained in Oracle’s Amended Complaint and Exhibits (Doc. #36).
- 2     • Allegations contained in Oracle’s Opposition to Google’s Motion to Dismiss (Doc. #40).
- 3     • Publicly available information relating to the Asserted Works including the documents  
4         produced at GOOGLE-00319933 through GOOGLE-00320071.
- 5     • Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of  
6         the Federal Rules of Evidence.
- 7     • The patents-in-suit and their prosecution histories.
- 8     • Publicly available documents with information regarding the statements and actions of  
9         Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in  
10         paragraphs 1 through 10 of the counterclaims asserted in Google’s Answer and  
11         Counterclaims under the heading “The Java Platform and Programming Language,” as well  
12         as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- 13     • Publicly available documents with information regarding the development of the Android  
14         Platform, including the information disclosed in paragraphs 11 through 17 of the  
15         counterclaims asserted in Google’s Answer and Counterclaims under the heading “The Open  
16         Handset Alliance and Development of the Android Platform.”
- 17     • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the  
18         heading “Android and the Java Programming Language” of Google’s Answer and  
19         Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through  
20         GOOGLE-00320077.

21                  Google further states that, as presently understood, Oracle’s allegations are directed  
22         toward one or more functionalities that are likely licensed by alleged direct infringers for at least  
23         some Accused Instrumentalities. Because Oracle has not specified with precision the Accused  
24         Instrumentalities and alleged direct infringers, Google cannot respond more completely to this  
25         Interrogatory. By way of example, certain of Oracle’s allegations with regard to the ‘520 patent  
26         include its own program, javac, as a component of the allegation. Upon information and belief,  
27         Google expects discovery to reveal that at least some alleged direct infringers are licensed to use  
28         that program. Until Oracle identifies on a claim by claim basis the identity of alleged direct

1 infringers performing each step of each claim and Google receives information regarding  
2 Oracle's licenses, Google cannot respond more completely to this Interrogatory.

3 Google further states that in the absence of an explicit license to asserted patents and  
4 copyrights, Google and other purported infringers are entitled to an implied license based on  
5 Oracle's actions, including statements and actions of its predecessor Sun. Google has a  
6 reasonable belief that the discovery it has served will reveal additional evidence to support this  
7 defense and reserves the right to supplement this response accordingly.

8 Google further states that, upon information and belief, Oracle knew at least as early as  
9 May 2005 that elements of the Android Platform were made publicly available by the Apache  
10 Software Foundation under the terms of the Apache Software License version 2.0 and were  
11 necessary to allow for interoperability. Upon information and belief, Oracle has never pursued  
12 any claim against the Apache Software Foundation or accused the materials created through the  
13 Apache Harmony Project of infringement and it is a publicly known fact that many members of  
14 the software development community have relied upon the availability of software code  
15 embodied in the Apache Harmony materials under the terms of the Apache Software License  
16 version 2.0 and used or distributed that code under those terms. Google has a reasonable belief  
17 that the discovery it has requested will reveal additional evidence to support this defense and  
18 reserves the right to supplement this response accordingly.

19 **INTERROGATORY NO. 16:**

20 Please explain the factual and legal bases for Google's pleading of its nineteenth  
21 affirmative defense: Unclean Hands.

22 **RESPONSE:**

23 In addition to its General Objections, Google objects to this Interrogatory as it seeking  
24 information protected by the attorney-client privilege, the work product doctrine, and/or any  
25 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory  
26 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible  
27 information. Google further objects to the request to "explain" factual bases as vague and  
28 ambiguous. Google further objects to any implication in this Interrogatory that Google has any

1 DATED: January 6, 2011

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